

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF NEW YORK

IN RE:

THE BENNETT FUNDING GROUP, INC.

Debtors

CASE NO. 96-61376
Chapter 11
Substantively Consolidated

APPEARANCES:

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Hon. Stephen D. Gerling, Chief U.S. Bankruptcy Judge

**MEMORANDUM-DECISION, FINDINGS OF FACT,
CONCLUSIONS OF LAW AND ORDER**

The Court considers the First Interim Fee Application (“Fee Application”) of Marotta Gund Budd & Dzera, LLC (the “Firm”), financial advisor to the Official Committee of Unsecured Creditors (“Committee”). The Fee Application , which was filed on March 13, 2002, sought

payment of professional fees in the sum of \$53,392.50¹ and reimbursement of expenses in the sum of \$1,231.90 for the period from February 9, 2001 through December 31, 2001. Opposition to the Fee Application was filed by the U.S. Trustee (“UST”) on April 8, 2002.

A hearing on the Fee Application was held on April 25, 2002, in Binghamton, New York. At the hearing, the Court granted a provisional award of \$40,000 for services rendered and \$1,000 for reimbursement of expenses, for a total award of \$41,000. On May 6, 2002, the Court signed an Order authorizing Richard Breeden, as chapter 11 trustee in the case, to pay the provisional award of fees and expenses from the unencumbered funds of the consolidated estate.

JURISDICTIONAL STATEMENT

The Court has core jurisdiction over the parties and subject matter of this contested matter pursuant to 28 U.S.C. §§ 1334, 157(a), (b)(1) and (b)(2)(A) and (O).

FACTS AND DISCUSSION

By Order to Show Cause, dated May 23, 1996, the Committee sought approval of the employment of Zolfo Cooper, LLC (“ZC”) as bankruptcy accountants and financial advisors to the Committee. Under the terms of their employment, ZC was to be reimbursed for its services at the hourly rate “in effect when the services are rendered; our rates generally are revised

¹ The Fee Application was not reviewed by Stuart, Maue, Mitchell & James, Ltd., the fee auditor in this case, since it did not exceed a requested fee of \$100,000.

annually.” Exhibit A at 3, attached to Application of the Committee for Authority to Employ Zolfo Cooper, LLC, dated May 8, 1996. The Court approved the retention of ZC as financial advisors to the Committee on July 10, 1996.

Paul Dzera (“Dzera”), a principal of ZC in July 1996, was responsible for the handling of the day-to-day matters in the case. According to the Eleventh Interim Application of ZC, filed May 3, 2001, covering the period between October 1, 2000 and March 19, 2001, Dzera was providing services at the rate of \$410 per hour in the month of December 2000 and at the rate of \$460 per hour in the month of January 2001.

According to the Committee, Dzera left ZC and formed the Firm on or about January 12, 2001. On or about February 9, 2001, the Committee, with the consent of ZC, requested that the Firm be substituted as financial advisors. The Court approved the Firm’s retention on an interim basis pursuant to Orders dated March 8, 2001 and April 26, 2001. On June 11, 2001, the Committee filed a supplemental application (“Application”) seeking approval of the Firm’s retention on a permanent basis.² The Court signed an Order on July 12, 2001, approving the Firm’s retention, effective as of June 11, 2001, “for the specific purposes set forth in paragraph 11 of the Application.”

The UST objected to Dzera’s hourly rate of \$475, noting that the rate exceeded his rates when he was employed at ZC. The UST also objected to the Firm charging \$.20 per page for photocopies since internal photocopies were to be reimbursed at the rate of \$.15 per page pursuant to the Court’s Order of December 2, 1996. The Firm agreed to reduce its request for

² According to Dzera’s affidavit,, sworn to on June 7, 2001, attached to the Committee’s Application, the hourly rates for principals of the Firm was \$475 per hour.

reimbursement of internal photocopy charges from \$195.20 to \$146.40 or a reduction of \$48.80 in expenses. *See* the Firm's Response, filed April 14, 2002. The UST also objected to the Firm's request for reimbursement of certain items relating to air and ground transportation for which no receipts had been provided. In response to the UST's objection, the Firm provided copies of the receipts. *See id.* at Tab 1.

Dzera's Fees

The Order, dated July 12, 2001, appointing the Firm as financial advisors to the Committee specifically provided that any compensation to be paid to the Firm would be subject to consideration by the Court. In this case, the Court finds no basis to award an increase in the fees charged for Dzera's services. In January 2001 the rate for his services had been increased \$50 per hour to \$460 from that being charged in December 2000 of \$410 per hour. The Court concludes that an additional \$15 increase is unwarranted in connection with services provided during the remainder of 2001. Accordingly, the Court will disallow \$1,470 (98 hours X \$15 per hour) in fees.

Expenses

Because the Firm has voluntarily agreed to reduce the amount charged for internal photocopying and has provided the receipts requested in connection with its air and ground travel, the Court deems it unnecessary to make any further reductions in the amounts requested for expenses.

In summary, the Court approves the Firm's Fee Application in the sum of \$51,922.50 in

fees, a reduction of \$1,470 consistent with the discussion above, and \$1,183.10 in disbursements. Crediting the Firm with a provisional award of \$40,000 in fees and \$1,000 in expenses, the Firm shall recover an additional \$12,105.60, payable from unencumbered funds of the consolidated estate.

IT IS SO ORDERED.

Dated at Utica, New York

this 2nd day of June 2004

STEPHEN D. GERLING
Chief U.S. Bankruptcy Judge